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August 9, 2018

Via Electronic and First-Class Mail

Shonda D. Green, Secretary  
Department of Telecommunications & Cable  
1000 Washington St., Suite 820  
Boston, MA 02118-6500

RE: D.T.C. 18-3 – Telecommunications Carrier Accounting Practices and  
Recordkeeping

Dear Ms. Green:

In response to recent accounting changes implemented by the Federal Communications Commission ("FCC"), on June 25, 2018, the Department of Telecommunications and Cable ("DTC") issued an Order Opening a Notice of Inquiry ("Order") requesting comments on the accounting practices, recordkeeping, and reporting requirements of telecommunications carriers, with particular focus on the data, accounting, and reporting requirements necessary to calculate pole attachment rates for poles owned by telecommunications carriers in Massachusetts. On July 25, 2018, the Department of Public Utilities ("DPU"), Verizon New England, Inc., d/b/a Verizon Massachusetts ("Verizon"), New England Cable & Telecommunications Association, Inc. ("NECTA"), and the Attorney General of the Commonwealth each submitted comments. The DPU now offers the following reply comments.

As a threshold matter, the DPU reiterates that the FCC's accounting changes do not apply to the existing pole attachment requirements in states like Massachusetts that have elected to regulate pole attachments. See DPU Comments at 2-3; 47 U.S.C. § 224(b), (c); In re Comprehensive Review of the Part 32 Unif. Sys. Of Accounts, 32 FCC Rcd. 1735,

1745-1746, ¶¶ 32, 34 (2017) (“Accounting Order”); see also G.L. c. 166, § 25A; 220 CMR 45.00 et seq.; States That Have Certified That They Regulate Pole Attachments, 25 FCC Rcd. 5541, 5542 (2010); Letter from Kajal Chattopadhyay, General Counsel, DTC, to Marlene Dortch, Secretary, FCC, WC Docket No. 10-101 (August 25, 2010).<sup>1</sup> As outlined in our initial comments, state-level pole attachment requirements include the application of the Massachusetts Formula (Verizon Comments at 1, 2; NECTA Comments at 5), which employs account information maintained consistent with the Uniform System of Accounts (“USOA”). DPU Comments at 4; see also Cablevision of Boston Co. et al. v. Boston Edison Co., D.P.U./D.T.E. 97-82, at 17-19 (1998) (“Cablevision”); A-R Cable Servs. Inc., et al. v. Mass. Elec. Co., D.T.E. 98-52, at 7-8 (1998) (“A-R Cable”); Greater Media, Inc. et al. v. New England Telephone & Telegraph Co., D.P.U. 91-218, at 13, n.11, 33-34 (1992) (“Greater Media”).

In urging the DTC to not “reinstate” Part 32 of the USOA, Verizon mischaracterizes the impact of the FCC’s decision on the pole attachment requirements currently in effect in the Commonwealth. Verizon Comments at 2, 7. In particular, there is no need for the DTC to “reinstate” any USOA requirements for incumbent local exchange carriers (“ILECs”) because the Massachusetts accounting requirements affecting pole attachment rates were not eliminated by the FCC’s Accounting Order. Thus, Verizon, investor-owned electric distribution companies, and municipal lighting plants remain subject to USOA-based reporting in the Commonwealth for purposes of determining pole attachment rates unless and until the DTC and the DPU jointly determine otherwise.

Nevertheless, given Verizon’s affirmed adoption of Generally Accepted Accounting Principles (“GAAP”) for accounting purposes (Verizon Comments at 9), the DTC must exercise its regulatory authority to clarify that Verizon remains subject to Massachusetts requirements currently in effect with respect to pole, duct, and conduit attachments. These requirements include but are not limited to the use of USOA-based data for the application of the Massachusetts Formula. See DPU Comments at 4.<sup>2</sup> In exercising this regulatory

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<sup>1</sup> Verizon acknowledges that “the federal changes have no material effect on Massachusetts.” Verizon Comments at 1.

<sup>2</sup> In addition, the DPU notes that under its Alternative Regulation Plan (“AltReg Plan”), Verizon remains subject to the pricing requirements for poles and conduits established in Greater Media until otherwise ordered. Appropriate Regulatory Plan to Succeed Price Cap Regulation for Verizon New England, D.T.E. 01-31-Phase II, Verizon AltReg Plan at 3, ¶ M (approved June 6, 2003). Greater Media involved the maximum attachment rate for cable television facilities within underground conduit owned by Verizon’s predecessor. See Greater Media at 1-2, 40-41. As NECTA notes, Cablevision built on the findings in Greater Media in establishing the Massachusetts Formula. See NECTA Comments at 3; see also Cablevision at 17-19.

authority, the DTC will provide clarity to both pole owners and attachers and ensure that there will be no unauthorized change to the Massachusetts pole attachment requirements and rates.<sup>3</sup>

The burden on Verizon to maintain USOA for pole-related data will be minimal. As both NECTA and Verizon confirm, Verizon has been submitting USOA-based pole data for Massachusetts with the FCC for years, including in its most recent pole data filing on April 2, 2018.<sup>4</sup> Verizon Comments at 3 & Attachment; NECTA Comments at 6-7 & Exhibit 1.

The Massachusetts Formula was established with the explicit purpose of allowing parties to calculate pole attachment rates based on publicly available data and without the need for agency intervention. See DPU Comments at 4, citing Cablevision at 1-2, 19; A-R Cable at 7; see also NECTA Comments at 3-5; Verizon Comments at 2. Verizon currently provides publicly available USOA-based pole data to the FCC for each state in which Verizon is an ILEC, “including Massachusetts and other states that are not subject to

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<sup>3</sup> Both NECTA and Verizon recognize that alternative inputs to the Massachusetts formula based on, for instance, GAAP, may result in changes to pole attachment rates. NECTA Comments at 9-10; Verizon Comments at 5; see also Accounting Order, 32 FCC Rcd. at 1746-1747, ¶¶ 35-39; DPU Comments at 4. Should the DTC and DPU subsequently determine that a joint investigation into modifications to the Massachusetts Formula is appropriate, the issues raised by NECTA involving application of GAAP to the Massachusetts formula would be appropriate for consideration there. NECTA Comments at 9-14.

<sup>4</sup> It is common practice for regulated utilities to maintain different sets of books for financial and regulatory accounting purposes at both the state and federal level. The focus of GAAP is general purpose financial reporting, which applies to both regulated and non-regulated industries. For regulated utilities, however, specific accounting and financial reporting practices are also required to ensure that these entities provide the data in a way that provides the regulatory agency with information on utility operations that aids in the review of utility costs for ratemaking purposes. In Massachusetts, pursuant to G.L. c. 164, § 81, gas and electric companies (as well as water companies by cross-application pursuant to G.L. c. 165, § 2) must keep their books and accounts in a form prescribed by the DPU. Consequently, regulated utilities in Massachusetts maintain their accounts both under GAAP for financial reporting purposes and also in accordance with the applicable regulatory accounting system (i.e., Massachusetts USOA for Gas Companies (220 CMR 50.00 et seq.); Massachusetts USOA for Electric Companies (220 CMR 51.00 et seq.); Massachusetts USOA for Water Companies (220 CMR 52.00 et seq.)).

the FCC's pole attachment rules.” Verizon Comments at 3-4.<sup>5</sup> Massachusetts attachers rely on this USOA-based pole data that Verizon submits to the FCC. NECTA Comments at 6-7, 15.

Going forward, Verizon asserts that it “intends to continue” filing Massachusetts data with the FCC based on GAAP instead of USOA. Verizon Comments at 3-4. Accordingly, NECTA expresses a valid concern about future access to USOA-based data, noting that without this information, attachers will likely have to challenge rates to get the information they need to verify compliance with the Massachusetts Formula. NECTA Comments at 14-15. To ensure that Verizon's pole and conduit data remain publicly available consistent with the application of the Massachusetts Formula and 220 CMR 45.04(2)(d), the DTC must require Verizon to submit USOA-based data at the state level going forward.<sup>6</sup>

Finally, Verizon maintains that requiring telecommunications carriers to use USOA in Massachusetts for pole attachment rate calculation somehow runs afoul of Executive Order No. 562. Verizon Comments at 7. The DPU disagrees. Executive Order No. 562 seeks to reduce unnecessary regulatory burden by requiring only those regulations which are mandated by law or essential to the health, safety, environment or welfare of the Commonwealth's residents be retained or modified. Office of the Governor, Commonwealth of Massachusetts, Executive Order No. 562 at § 3 (March 31, 2015). Massachusetts has certified to the FCC that it regulates pole attachments. Further, pursuant to G.L. c. 166, § 25A, 220 CMR 45.00 et seq. and as addressed in the Memorandum of Agreement entered into by the DPU and DTC, Massachusetts has established a method using USOA data to calculate just and reasonable pole attachment rates. DPU Comments at 3. Because the federal requirements do not apply in Massachusetts, the Massachusetts pole attachment regulations, 220 CMR 45.00 et seq., and the requirements established to calculate just and reasonable rates are both necessary and neither inconsistent nor redundant with federal requirements. Further, due to the prevalence of joint pole ownership in Massachusetts by telecommunications carriers,

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<sup>5</sup> The FCC does not require Verizon to report Massachusetts-specific pole data at the federal level. See In re Petition of Qwest Corp. for Forbearance from Enforcement of the Comm'n's ARMIS & 492A Reporting Requirements Pursuant to 47 U.S.C. § 160(c), 23 FCC Rcd. 18483, 18490-18491 (2008).

<sup>6</sup> The DPU anticipates that the DTC would make this information available on its website, similar to the DPU's process for posting the annual returns submitted by investor-owned electric distribution companies and municipal light plants. See DPU website, <https://www.mass.gov/service-details/find-an-electric-company-annual-return> (last visited August 8, 2018). The annual returns contain all publicly available information necessary to determine pole attachment rates using USOA. See DPU Comments at 3-4.

investor-owned electric distribution companies, and municipal lighting plants, ensuring consistency in the calculation of pole attachment rates by each co-owner is essential, in the public interest, and likely to reduce, if not circumvent, litigation over pole attachment rates in Massachusetts.<sup>7</sup>

In sum, the DPU respectfully requests that the DTC confirm for the benefit of all interested parties the reporting requirements currently applicable to ILECs in Massachusetts. Further, the exercise of the DTC's regulatory authority appears necessary to clarify that Verizon remains subject to current Massachusetts requirements with respect to pole, duct, and conduit attachments, including the maintenance of pole and conduit account information consistent with the USOA, in order to ensure that no unauthorized changes in pole attachment rates result. Finally, DTC must require Verizon to submit USOA-based pole and conduit data at the state level to ensure that such data remain publicly available and to reduce the potential of unnecessary disputes and formal complaints.

Thank you for the opportunity to provide these comments.

Sincerely,

/s/

Shane Early  
General Counsel

cc: Angela O'Connor, Chairman, DPU  
Sandra Callahan Merrick, General Counsel, DTC

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<sup>7</sup> Verizon points to the stability of pole attachment rates and the absence of pole rate litigation in Massachusetts. Verizon Comments at 5 & n.12. The DPU submits that this is a testament to the efficacy of the Massachusetts Formula and provides ample support for maintaining the regulatory status quo in Massachusetts.